

February 3 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 10-0035

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FEB 03 2010

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Attorneys for Appellee/Cross Appellant

<p>PATRICK CHEFF,</p> <p>Appellee/Cross Appellant,</p> <p>vs.</p> <p>BNSF Railway Company, A Corporation,</p> <p>Appellant/Cross Appellee.</p>	<p>NOTICE OF CROSS APPEAL</p>
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- NOTICE is given that, Patrick Cheff, the Appellee/Cross Appellant above-
- named and who is the plaintiff in that cause of action filed in the Eighth Judicial

District, in and for the County of Cascade, as Cause No. DV-08-1121, hereby appeals to the Supreme Court of the State of Montana from the district court's orders entered in such action on the following dates:

1) Order dated July 10, 2009, denying Plaintiff's Motion in Limine to Exclude Evidence of Contributory Negligence or Assumption of Risk;

2) Order dated October 29, 2009, denying Plaintiff's motion for a directed verdict or verdict as a matter of law striking Defendant's affirmative defenses related to contributory negligence or assumption of risk;

3) Order dated January 8, and entered on January 11, 2010, granting defendant's motion for judgment set off; and,

4) All orders, rulings, or instructions objected to prior to, during or following the trial of this action, and in particular those instructions submitted to the jury related to the issues of contributory negligence or assumption of risk.

The Appellee/Cross Appellant appeals from the district court's judgment entered on November 9, 2009, and the court's amended judgment entered on January 19, 2010, only to the extent they are reduced by set off for a prior settlement or for contributory negligence or assumption of risk.

THE CROSS APPELLANT FURTHER CERTIFIES:

1. That this cross appeal is subject to the mediation process as required by Mont.R.App.P. 7. The money judgment being sought is not less than \$5,000.

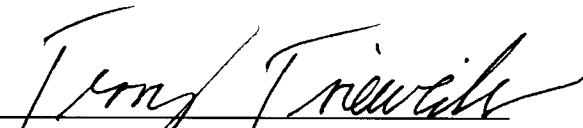
2. That this cross appeal is not an appeal from an order certified as final under Mont.R.Civ.P. 54(b).

3. That no notice under Mont.R.App.P. 27 has to be given as there is no challenge to the constitutionality of any act of the Montana Legislature.

4. That the pertinent pages from the transcript of the proceedings in this cause have been ordered from the court reporter prior to the filing of this notice of cross appeal.

5. That included herewith is the filing fee prescribed by statute.

DATED this 3rd day of February, 2010.

By: 
Terry N. Frieweller
Attorney for Appellee/Cross Appellant

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF CROSS APPEAL with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing NOTICE OF CROSS APPEAL upon the Clerk of the District Court, each attorney of record, and each court reporter from whom a transcript has been ordered as follows:


Ruth Reeves
Clerk of District Court
415 Second Avenue North
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This NOTICE OF CROSS APPEAL was filed by facsimile with the Clerk of the Montana Supreme Court and the Clerk of the District Court at 11:45 a.m. on February 3, 2010.

DATED this 3rd day of February, 2010.



Karen R. Weaver
Legal Assistant to Terry N. Triewailer